

**DEPARTMENT OF COMMERCE (DOC)****Statement of Regulatory Priorities**

Sustainable, long-term economic growth is a central focus of the President's policies and priorities. The mission of the Department of Commerce is to promote job creation, economic growth, sustainable development, and improved living standards for all Americans, by working in partnership with business, universities, communities, and workers to:

- Build for the future and promote U.S. competitiveness in the global marketplace, by strengthening and safeguarding the Nation's economic infrastructure;
- Keep America competitive with cutting-edge science and technology and an unrivaled information base; and
- Provide effective management and stewardship of our Nation's resources and assets to ensure sustainable economic opportunities.

In his State of the Union message, the President said: "Now we move to an age of technology, information, and global competition. These changes have opened vast new opportunities, but they have also presented us with stiff challenges." The Vice President has sounded a similar call: "Americans also understand that in a global economy, the only way to maintain America's competitive edge is to lead the world in innovation and new technologies. Investments in science and technology mean better jobs, higher wages, and a growing economy."

These words help to make clear the role of the Commerce Department: To help keep America as the world's technology leader, to help American companies compete globally, to enable communities to conquer economic challenges, to stimulate the growth of high-pay, high-quality jobs, to preserve and protect the environment and our natural resources as well as safeguarding the public from environmental changes, and to provide information vital for good business and policy decisions.

Commerce promotes and expedites American exports, helps nurture business contacts abroad, protects our firms from unfair foreign competition, and makes how-to-export information accessible to small- and mid-sized companies throughout the Nation so that market opportunities span the globe.

Commerce encourages development in every community, by clearing the

way for private sector growth by building or rebuilding economically deprived and distressed communities. We promote minority entrepreneurship to establish businesses that frequently anchor neighborhoods and create new job opportunities. We work with the private sector to enhance competitive assets.

As the Nation looks to revitalize our industries and communities, Commerce works as a partner with private entities to build America with an eye on the future. So through technology, research and development, and innovation, we are making sure America is on the winning side.

Commerce's considerable information capacities help businesses understand clearly where our national and world economies are going, and to take advantage of that knowledge by planning the road ahead. Armed with this information, businesses can undertake the new ventures, investments, and expansions that make our economy grow.

The capacity for managing the Nation's assets and resources is another key policy driver for Commerce, an essential one in our ability to help the Nation succeed in the future. These activities—ranging from protecting our fisheries to controlling the radio frequency spectrum to protecting intellectual property—affect the economy directly.

This Department of Commerce has instituted the programs and policies that mean cutting-edge, competitive, better paying jobs. We work everyday to boost exports, to deregulate business, to help smaller manufacturers battle foreign competition, to advance the technologies critical to our future prosperity, to invest in our communities, and to fuse economic and environmental goals.

The Department of Commerce is American business' surest ally in job creation, serving as a vital resource base, a tireless advocate, and a Cabinet-level voice for the private sector.

The Department's regulatory plan directly tracks these policy and program priorities, only a few of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

To the extent permitted by law, all preregulatory and regulatory activities and decisions adhere to the Administration's statement of regulatory philosophy and principles, as set forth

in section 1 of Executive Order 12866. The Department of Commerce has long been a leader in advocating and using market-oriented regulatory approaches in lieu of traditional command-and-control regulations when such approaches offer a better alternative. All regulations are designed and implemented to maximize societal benefits while placing the smallest possible burden on those being regulated.

When a regulation is no longer needed, the Secretary's standing order is to rescind it. In this light, one of the Secretary's first actions upon appointment was to institute a pilot Regulatory Offset Program. Under this program, the Department will eliminate two existing regulations for each new regulation it issues.

The Secretary has prohibited the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written in simple, plain English and be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in departmental rulemakings, even where public participation is not required by law.

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only 4—the Bureau of Export Administration (BXA), the International Trade Administration (ITA), the National Oceanic and Atmospheric Administration (NOAA), and the Technology Administration—plan significant preregulatory or regulatory actions for the regulatory plan year. Many of these regulatory actions do not involve new or increased regulation of the private sector. Two of these operating units—ITA and NOAA—have the most important of the Department's significant regulatory actions planned for the regulatory plan year. These two units are described below, along with their regulatory objectives and priorities and how they relate to the President's priorities and their most significant planned regulatory actions.

The Commerce Department is also reinventing itself by taking into account, among other things, the President's regulatory principles. We have made bold and dramatic changes, never being satisfied with the status quo. Over the past 3-1/2 years we have emphasized, initiated, and expanded programs that

work in partnership with the American people to secure the Nation's economic future. At the same time we have downsized, cut regulations, closed offices and eliminated programs and jobs that are not part of our core mission. The bottom line is that, after much thought and debate, we have made many hard choices needed to make this Department "state of the art."

Reinvention at the Department of Commerce has not only meant cutting regulations or improving existing services. It has also meant purposeful growth, particularly in the areas of trade and technology.

The Secretary believes reinvention should view the entire Federal Government as a major corporation and view the Department of Commerce as a critical function within that corporation. A company going through a reinvention process may shed jobs and functions, but it will also expand and enhance operations that are vital to its long-term growth. It is certainly going to build on partnerships with its customers that work. We believe expansion of essential programs at Commerce is vital to economic growth.

#### *Streamlining Regulatory Processes*

The Department of Commerce has taken a variety of steps to reduce regulatory burden by streamlining its regulatory processes. For instance, export controls on computers and telecommunications equipment have been changed, thereby eliminating the requirement for prior approval on over \$32 billion worth of exports. Further, the Department has finished the first complete rewrite of the export control regulations in 45 years. This will make compliance easier, particularly for small firms. In addition, departmental grants processing time has been reduced an average of 25 percent. Finally, the Department has simplified its forms, encouraged electronic filing, and has coordinated data sharing with other statistical agencies to reduce respondent burden, saving the private sector hundreds of thousands of dollars in time and money.

The Department is taking steps to streamline its regulatory processes and delivery systems in line with the President's directives. In his September 30, 1993, Memorandum for Heads of Departments and Agencies, President Clinton stated:

In order to streamline the entire [Federal] rulemaking process, agencies must, consistent with any applicable laws, utilize internally the most efficient method of developing and reviewing regulations.

Accordingly, I direct the head of each agency and department to examine its internal review procedures to determine whether, and if so, how those procedures can be improved and streamlined. In conducting this examination, the agency or department shall consider the number of clearances required by its review process and whether its review process varies according to the complexity or significance of the rule.

Each preregulatory and regulatory action of the Department is undertaken with the concept of streamlining in mind. Methodologies for eliminating levels of review and delegating decisionmaking authority down to the lowest appropriate level are constantly being tested. Further, the Department is employing advanced technology designed to create greater responsiveness. For example, the Office of the General Counsel developed a regulation data base and tracking system. This system provides decisionmakers with precise, concise, and up-to-the-minute information on the substance, status, and history of each of the Department's regulatory actions.

#### *Eliminating and Improving Regulations*

On February 21, 1995, President Clinton announced his plans for reform of the Federal regulatory system. This plan included four steps each agency was to undertake in order to achieve meaningful reform. One of the points in the President's program directed each agency to undertake a page-by-page review of its regulations to determine those that were obsolete and could be deleted and those that were in need of reinvention. In light of the varied activities and responsibilities of the Department, each agency reviewed its regulations using a methodology most appropriate for its legal obligations, organizational structure, and policy priorities. However, all agencies were directed to analyze each of their regulations to determine if they were necessary and, if so, whether it should be rewritten to make the regulation more streamlined and user-friendly. Additionally, the regulatory review was conducted by each agency with its, as well as the Department's and Administration's, policy and program priorities clearly in mind.

The results of each agency's activities under the President's initiative comprise a total elimination or reinvention of a substantial percentage of the Department's regulations. At the time of the President's announcement, the Department had 2,878 pages of regulatory text in the Code of Federal

Regulations (CFR). The Department proposed to eliminate 696 pages of existing regulations in the CFR. As of July 9, 1996, a total of 539 pages of existing regulation had been eliminated by issuance of a final rule and proposed rules to eliminate another 186 pages of existing regulations had been issued. As such, the Department has, or will, eliminate 725 pages of regulations. This represents 104 percent of the total promised to the President, and 25 percent of the Department's pages in the CFR. Further, 1,859 pages of regulatory text were designated to be reinvented under the President's initiative. As of July 9, 1996, 1,175 pages of regulation had been reinvented by issuance of a final rule and 439 pages were proposed to be reinvented through issuance of a proposed rule. This activity, in addition to 120 pages of Endangered Species Act (ESA) regulations that can not be reinvented due to uncertainty concerning legislation to reauthorize the ESA, equals 1,734 pages, or 92 percent of the amount promised the President, and 66 percent of the Department's total pages of regulation.

The totals represent the changes achieved by the Department as a whole. However, as mentioned above, the review was conducted by the individual agencies of the Department. As such, individual agencies within the Department of Commerce should be noted for their contribution to these amounts and the substantive changes they represent.

The Bureau of Export Administration (BXA) administers and enforces U.S. export controls on certain commodities, software, and technical data that have both military and civilian uses. The BXA regulations establishing these controls are called the Export Administration Regulations (EARs). Probably the best example of the reengineering of an entire regulatory system is the work done by BXA to rewrite the entire EAR. (An Interim Final Rule was published in the Federal Register on March 25, 1996.) This comprehensive review simplifies and clarifies a complex body of regulations, makes the regulations more user-friendly and is designed to ensure that novice and veteran exporters alike can more easily locate the regulations that pertain to their particular circumstances.

BXA undertook an almost 3-year process to accomplish this task. This process included an advance notice to solicit public comment prior to drafting, making versions of the draft proposed rule available to the public while it was

being developed, and conducting 18 "town-hall" meetings during the comment period on the proposed rule.

The BXA rule embodies several substantial changes and innovations. Most important among these is a fundamental redirection from a negative presumption, that all exports subject to the EAR are prohibited unless authorized, to a positive approach, in which no license or other authorization is required for any transaction subject to the EAR unless the regulations affirmatively state the requirement. Additionally, the affirmative statements of the need to obtain a license, previously scattered throughout the EAR, are consolidated into ten general prohibitions, in one part of the Code of Federal Regulations. Finally, a simple Country Chart was added to the regulations to provide a graphic illustration of when a license is required for any item exported to any country in the world.

The Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements), negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), and the Uruguay Round Agreements Act implementing legislation, establish general principles regarding the administration of antidumping and countervailing duty laws. In order to facilitate the administration of these laws and to provide greater predictability for affected private parties, the Department of Commerce issued a proposed rule, published on February 27, 1996, which translates the principles of the Agreements and the implementing legislation into specific and predictable rules.

In developing the proposed rule, the Department took several steps to enhance the regulations' effectiveness and to make them more accessible to affected parties. First, the antidumping and countervailing duties regulations, currently contained in two separate parts of the Code of Federal Regulations, were consolidated into one part. As antidumping and countervailing duties procedures are essentially identical, consolidating those portions of the regulations concerning procedures will make the regulations easier to use and will make readily apparent the identification of those instances where the procedures differ. Second, where possible, the proposed regulations simplify and streamline the antidumping and countervailing duties process. Finally, and possibly the most important change in the regulations,

each section of the proposed regulation begins with a straightforward "plain English" explanation of the provisions of that section. This was done to ensure that non-lawyers could read, understand, and apply the regulations.

The Economic Development Administration (EDA) at the Commerce Department published a final rule on March 1, 1996, to completely revise and streamline its regulations. It had been over 20 years since EDA's regulations were completely revamped. Many regulations were out of date, applied to programs that no longer existed, or reflected policies that had changed or that were not applied in a consistent or regular manner. In essence, EDA's regulations did not achieve the goal of truth-in-regulating that is at the heart of a reinvented Government.

The reform of EDA's regulations produced not only fewer and more streamlined regulations but also yielded regulations that had been thought anew and which were restricted to the absolute minimum necessary to achieve EDA's program goals. The reinvention process resulted in the elimination of over 200 of EDA's approximately 370 regulations. Further, those regulations remaining were rewritten in "plain English" so that they will be more easily understood by EDA's customer—potential grant applicants and the businesses and communities that benefit from economic development projects. Further, EDA staff will be better able to explain and apply the regulations, leading to greater continuity and consistency in the application of EDA's regulations among its regional offices.

The National Marine Fisheries Service (NMFS), a division of the Commerce Department's National Oceanic and Atmospheric Administration, regulates the United States fishing industry. NMFS regulations implement fishery management plans developed by regional fishery management councils, comprised of Federal, State, and local officials, industry participants, and other interested individuals. Previously, NMFS regulations implementing fishery management plans for particular fisheries were contained in separate parts of title 50 of the Code of Federal Regulations (CFR). As such, it was difficult for fishers to find the rules that governed their fishing activities. Furthermore, the fact that the regulations were contained in separate parts meant that there was a great deal of duplication telling fishers what actions were required and which were prohibited. Finally, because the regulations were separate, many

common terms had slightly different definitions, causing confusion.

In order to correct this situation, NMFS undertook a massive project to consolidate each of the various regulations implementing fishery management plans into CFR parts organized by region. In other words, all regulations implementing fishery management plans under the jurisdiction of each regional fishery management council were placed into a separate part of the Code of Federal Regulations for each council. This means, for example, that a fisher who fishes off the coast of New England need only look at the CFR part pertaining to New England to find all the rules for any fishery in which he or she might want to participate. In addition, these actions streamlined the regulations by eliminating duplicative provisions, harmonizing definitions, and redrafting remaining provisions in "plain English." The effect was to create a body of regulations that are easier to read and simpler to use.

In addition, NMFS has instituted a "Fix-it" ticket program which uses compliance procedures for relatively minor violations. Under this program, both verbal and written warnings will be used more frequently than has been past practice. For example, in the instance of a violation of conservation regulations that prohibit the possession of certain fish, where there is no evidence of an intent to violate the regulations for commercial gain, the appropriate remedy may be to allow the inadvertent violator to abandon the unlawfully obtained fish. The same remedy may be used in cases involving small-percentage violations of fishing trip poundage limits. In cases where a particular type of fishing gear must be used, and the fisherman has not done so, first offenses may be forgiven if the fisherman demonstrates that he or she subsequently has acquired the proper gear or otherwise corrected the problem with the gear. Additionally, NOAA has amended its penalty schedules to reflect a less confrontational approach to first-time violators and small businesses. If compliance can be easily obtained at the time a violation is detected, then that will be the preferred approach. These changes will improve the Agency's image with the regulated public and foster voluntary compliance. Moreover, these changes will free up enforcement agent and attorney time to allow greater concentration on major cases involving deliberate non-compliance for commercial gain.

## Description of Agency Regulations

### *International Trade Administration*

The International Trade Administration (ITA) is responsible for most nonagricultural trade promotion and enforcement activities of the Federal Government. It works with the Office of the U.S. Trade Representative in coordinating U.S. trade policy. A large component of ITA's activities does not involve regulation. However, ITA has important regulatory authority under a number of U.S. trade laws.

ITA administers programs to strengthen domestic export competitiveness and to promote U.S. industry's increased participation in international markets. ITA's trade development program includes policy development, industry analysis, and promotion organized by industrial sectors such as science and electronics, basic industries, chemicals and allied products, energy, and textiles and apparel. Among its regulatory activities, ITA issues certificates of review providing export trading companies with limited immunity from liability under antitrust laws.

ITA helps achieve the major departmental goal of opening and expanding foreign markets and promoting increased exports of U.S. goods and services in markets with the highest potential for growth, such as Asia and Latin America, and in important growing sectors, such as computers, telecommunications, and environmental technologies. The report of the TPCC outlined more than 60 specific actions to strengthen U.S. export promotion efforts. Many of these actions, such as increasing U.S. businesses' awareness of sources of, and access to, trade finance and the establishment of one-stop U.S. Export Assistance Centers, directly involve ITA but do not involve regulation.

ITA also enforces our trade laws to ensure free and fair competition in our domestic market between U.S.- and foreign-manufactured goods. It administers and enforces the antidumping and countervailing duty laws of the United States. It investigates whether exports to the United States are subsidized or sold at less than fair value; when it finds that they are, and the U.S. International Trade Commission finds that a U.S. industry has been injured or threatened with material injury as a result, it issues an order to the U. S. Customs Service to impose offsetting duties. In addition, ITA administers the Foreign Trade Zone and Watch Quota Programs, and the

Educational, Scientific, and Cultural Materials Importation Act.

### Antidumping and Countervailing Duties Regulations

The top regulatory priority of ITA is revising the antidumping and countervailing duty regulations to conform to legislation implementing the results of the Uruguay Round multilateral trade negotiations.

The newly negotiated Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements) establish general principles regarding the administration of antidumping and countervailing duty laws. In order to facilitate the administration of these laws and to provide greater predictability for private parties affected by these laws, it will be necessary to promulgate regulations which, where appropriate and feasible, translate the principles of the Agreements and the implementing legislation into specific and predictable rules. By clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws, the efficiency and fairness of these laws will be enhanced at little, if any, additional cost. The manner in which these regulations are drafted could have a significant impact on various important sectors of the economy, including steel, lumber and bearings.

### *National Oceanic and Atmospheric Administration*

The National Oceanic and Atmospheric Administration (NOAA) establishes and administers Federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental services vital to public safety and to the Nation's economy, such as weather forecasts and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving the departmental goal of promoting stewardship and assessment of the global environment.

In recognition that economic growth must go hand-in-hand with environmental stewardship, the Commerce Department, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on "sustainable fisheries" is saving fisheries and confronting short-term economic dislocation, while boosting

long-term economic growth. The Department of Commerce is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a "win-win" situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects marine mammals, and promotes the economic development of the U.S. fishing industries. NOS assists the coastal States in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate civil operational land-remote sensing satellite systems.

The Administration is committed to an environmental strategy that promotes sustainable economic development and rejects the false choice between environmental goals and economic growth. The intent is to have the Government's economic decisions be guided by a comprehensive understanding of the environment. The Department of Commerce through NOAA has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development and technology with environmental issues. NOAA has the primary Federal responsibility for providing the sound scientific observations, assessments and forecasts of environmental phenomena on which resource management and other societal decisions can be made. The Department of Commerce's Economics and Statistics Administration has the primary Federal responsibility for providing information about the economy.

In the environmental stewardship area, NOAA's goals include rebuilding U.S. fisheries by refocusing policies and fishery management planning on increased scientific information; increasing the populations of depleted, threatened, or endangered species of

marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include modernizing the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Programs that seek to achieve the above goals involve fishery management activities under the Magnuson Fishery Conservation and Management Act and other statutes, including regulatory, enforcement, and conservation actions; endangered species and marine mammal protection activities; marine habitat conservation activities under the Fish and Wildlife Coordination Act and the Federal Power Act; deep-seabed mining regulatory activities under the Deep Seabed Hard Mineral Resources Act; studies on locating ocean dump sites and disposing of toxic waste under the Marine Protection, Research and Sanctuaries Act and other laws; and coastal zone, estuarine research reserve and national marine sanctuary management activities, including regulatory activities under various statutes.

NOAA's principal regulatory objectives are to manage more effectively the marine fishery resources under its jurisdiction, to implement the designation of the Florida Keys National Marine Sanctuary, and to promulgate natural resource damage assessment regulations applicable to oil spills.

#### Magnuson Act Rulemakings

Magnuson Fishery Conservation and Management Act (Magnuson Act) rulemakings concern the conservation and management of fishery resources in the U.S. 3-to-200-mile Exclusive Economic Zone (EEZ). Among the several hundred rulemakings that NOAA plans to issue in the regulatory plan year, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight

regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery and by other circumstances which cannot be predicted. Once a rulemaking is triggered by a FMC, the Magnuson Act places stringent deadlines upon NMFS in which it must exercise its rulemaking responsibilities. Most of these rulemakings will be minor, involving only the opening or closing of a fishery under an existing FMP. While no one Magnuson Act rulemaking is among the Department's most important significant regulatory actions, and therefore none is specifically described below, the sum of these actions, and a few of the individual actions themselves, are highly significant.

The Magnuson Act, which is the primary legal authority for Federal regulation to conserve and manage fishery resources, establishes eight regional FMCs, responsible for preparing FMPs and FMP amendments. NMFS issues regulations to implement FMPs and FMP amendments. FMPs address a variety of fishery matters, including depressed stocks, over-fished stocks, gear conflicts, and foreign fishing. One of the problems that FMPs may use is preventing overcapitalization (preventing excess fishing capacity) of fisheries by limiting access to those dependent on the fishery in the past and/or by allocating the resource through individual transferable quotas which can be sold on the open market to other participants or those wishing access. Quotas set on good scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds and establishing seasonal and area closures to protect fishery stocks.

NMFS favors the concept of framework FMPs where applicable. Such FMPs provide ranges, boundaries, and decision rules within which NMFS can change management measures without formally amending the FMP. Further, consistent with the recommendations on improving regulatory systems accompanying the Report of the National Performance Review, NMFS favors using market-oriented approaches such as marketable limited access permits and marketable individual quotas in managing fisheries.

Open-access fisheries are destined to have too many people investing too much money in vessels and equipment. Access controls (e.g., a limited number of permits) represent a rational approach for managing fishery resources; they can be used to control fishing mortality levels and to prevent overfishing, economic dissipation, and subsequent economic and social dislocation. Of course overall quotas will need to be set based on the best scientific information available as to such things as stock status and optimum yields. At present, adequate scientific information is available for only 34 percent of all U.S. fishery resources.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson Act. This process, including the selection of the preferred management measures, constitutes the development, in simplified form, of an FMP. The FMP, together with draft-implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

The Magnuson Act contains seven national standards against which fishery management measures are judged. NMFS has supplemented these standards with guidelines interpreting each standard. One of the national standards requires that management measures, where practicable, minimize costs and avoid unnecessary duplication. Under the guidelines, NMFS will not approve management measures submitted by an FMC unless the fishery is in need of management. Together, the standards and the guidelines correspond to many of the Administration's principles of regulation as set forth in section 1(b) of Executive Order 12866. One of the national standards establishes a qualitative equivalent to the Executive order's "net benefits" requirement—one of the focuses of the Administration's statement of regulatory philosophy as stated in section 1(a) of the order.

Rulemakings implementing an FMP or amendment cannot be precisely scheduled in advance because, for the most part, an FMP or amendment is

developed and submitted by an FMC. The timing of the submission is determined by the FMC, not by NMFS. Upon receiving an FMP or amendment and implementing regulations, NMFS is required by the Magnuson Act to publish the proposed implementing regulations within 15 days unless, after preliminary review, NMFS disapproves the FMP or amendment because it is inconsistent with the national standards or too deficient in scope and substance to warrant review. Upon completion of the preliminary review, if NMFS finds that the FMP or amendment is consistent with the national standards and sufficient in scope and substance to warrant further review, NMFS must commence such review. Upon completion of that review, if NMFS finds that the FMP or amendment is consistent with the national standards, the other provisions of the Magnuson Act, and any other applicable law, NMFS must approve the FMP or amendment and issue final regulations implementing it. If the FMP or amendment is not consistent with the Magnuson Act or other applicable law, NMFS must disapprove or partially disapprove it within 95 days of receipt, and the FMC may submit a revised FMP or amendment.

#### Florida Keys National Marine Sanctuary Rulemaking

NOAA's most important significant regulatory action will be finalizing the management plan and regulations for the Florida Keys National Marine Sanctuary. A proposed management plan and proposed implementing regulations were published in early spring 1995. Mounting threats to the ecological health and future of the coral reefs of the Florida Keys from oil drilling, deteriorating water quality, vessel groundings, pollution, and intense human use prompted Congress to enact the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) in late 1990. This Act designated a 2800 square nautical mile area of coastal waters running the entire 220 mile length of the Florida Keys as the Florida Keys National Marine Sanctuary (Sanctuary). The Act makes NOAA responsible for developing a comprehensive Sanctuary management plan, including a Florida and U.S. EPA-developed Water Quality Plan, to protect Sanctuary resources while facilitating all compatible public and private uses of the Sanctuary.

Because of the size of the Sanctuary and the variety of the resources the proposed plan addresses, many problems never before presented in

Sanctuary management must be addressed. For example, significant declines in water quality and habitat conditions in Florida Bay are threatening the health of Sanctuary resources. These conditions are thought to be the result of water quality and quantity management in the South Florida region. Accordingly, all agencies with responsibility in these areas are being incorporated into the continuous process of Sanctuary management of this marine area.

A draft environmental impact statement (DEIS) has been published which sets forth management alternatives for dealing with the problems identified in the planning process (e.g., boating, fishing, recreation). Five alternatives are set forth for each problem ranging from complete restriction of uses to maintaining the status quo, with the most attention paid to the three mid-range alternatives. The DEIS sets forth the environmental consequences and the economic and social effects on the human environment of the three mid-range alternatives, including the groups and industries likely to be impacted under each alternative. The DEIS selects the middle alternative as the preferred course of action because it best accomplishes the statutory objectives with due consideration of impacts on the human environment and costs.

In passing the FKNMSPA, Congress specifically recognized that the unique natural and historic environment of the Florida Keys is irreplaceable. As such, the benefits of the proposed regulation are best seen by looking at what would be lost if the environment were not protected. First, the 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, particularly the Florida Reef Tract. In addition to the reef tract, the Sanctuary boundaries include thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. Moreover, these diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Finally, because the Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, submerged cultural and historic resources; i.e., shipwrecks, also abound in the surrounding waters. Recent

information indicates that there may be more archaeological resources of pre-European cultures than had previously been believed to be the case.

Loss of the unique and distinct marine resources of the Sanctuary would not only cost an irreplaceable ecosystem and cultural and historic resources, it would also significantly damage the economy of the Florida Keys. The abundance of marine resources in the Keys draws thousands of visitors each year. As such, the major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats, marinas, as well as hotels and restaurants. More than half (51 percent) of the Florida Keys' employment is based in recreation and tourism, with about 61 percent of all recreation and tourism activities being water-related. About half of the \$1.6 billion in total sales for the area are related to tourism, with another \$16 million spent by Keys residents for recreation activities.

The wealth of natural marine resources also supports a large commercial fishing sector. With approximately 9 percent of the area work force, this industry is the fourth largest source of employment in the Keys.

Finally, the monetary costs of compliance with these proposed regulations borne by individuals would be relatively small and arise from the following two items. First, some of those engaged in consumptive fishing will likely need to travel farther to fish. Additionally, some activities that were previously unregulated, such as treasure salvaging (in Federal waters) and coral collecting, would require permits or be subject to additional requirements. However, the amount charged for a permit may not exceed the cost of administering permit issuance.

It should be noted that Congress itself included several prohibitions that, by the prevention of income-generating and wealth-generating activity, will be quite costly. Specifically, Congress prohibited oil, gas and mineral leasing and development and prohibited vessels greater than 50 meters from an Area to Be Avoided. However, since Congress prohibited these activities, the regulatory prohibition does not create associated costs. Other than the prohibition of oil, gas and mineral leasing, the Sanctuary regulations contain some Sanctuary-wide prohibitions, such as the prohibition on harvesting live rock or altering the seabed, that may generate costs.

Many issues inherent in Sanctuary regulation are foreclosed by prohibitions in the FKNMSPA on tank vessels and on mineral and hydrocarbon leasing, exploration, development, and production within the Sanctuary.

The proposed regulations employ water zoning as a means of protecting Sanctuary resources and preventing user group conflicts. While several regulatory restrictions apply throughout the Sanctuary, certain restrictions apply only by zone. For example, all consumptive activities would be prohibited within 22 zones, constituting just over 5 percent of the Sanctuary area, including 90 percent of the heavily used, well-developed coral reef formations. This action might engender opposition from members of the public whose activities (diving, fishing, and boating) would be highly restricted; however, it was believed that this method was the best approach for achieving protection while still facilitating use of the Sanctuary.

#### **DOC—International Trade Administration (ITA)**

### **FINAL RULE STAGE**

#### **13. ANTIDUMPING DUTIES; COUNTERVAILING DUTIES**

##### **Priority:**

Other Significant

##### **Reinventing Government:**

This rulemaking is part of the Reinventing Government effort. It will revise text in the CFR to reduce burden or duplication, or streamline requirements.

##### **Legal Authority:**

19 USC 1671 et seq.; 19 USC 1673 et seq.; 19 USC 1303

##### **CFR Citation:**

19 CFR 351; 19 CFR 353; 19 CFR 355

##### **Legal Deadline:**

Other, Statutory, January 1, 1996.

Section 103(b) of the Uruguay Round Agreements Act establishes January 1, 1996, as the deadline for interim final regulations.

##### **Abstract:**

Revisions of the antidumping and countervailing duty regulations are necessary due to enactment of legislation implementing the results of the Uruguay Round multilateral trade

negotiations. Clarifying the methodologies and procedures used in administering the antidumping and countervailing duty laws will enhance the efficiency and fairness of these laws at little, if any, additional cost.

##### **Statement of Need:**

Regulations are needed to implement the results of the Uruguay Round with respect to the administration of the antidumping and countervailing duty laws. The newly negotiated Antidumping Agreement and Subsidies/Countervailing Measures Agreement (Agreements) establish general principles regarding the administration of these laws. In order to facilitate the administration and to provide greater predictability for private parties affected by these laws, it will be necessary to promulgate regulations which, where appropriate and feasible, translate the principles of the Agreements and the implementing legislation into specific and predictable rules.

##### **Summary of the Legal Basis:**

The Secretary of Commerce is responsible for administering the antidumping and countervailing duty laws pursuant to authority contained in several legislative enactments, See 19 USC 1671 et seq.; 19 USC 1673 et seq.; 19 USC 1303. These laws conform to the Agreements and reflect internationally agreed rules regarding unfair trade. The Secretary, acting through the Import Administration of the International Trade Administration, is responsible for processing petitions from firms that allege they have been harmed by unfair competition from imports, making preliminary and final determinations about whether such competition was subsidized or benefited from "dumping," and conducting periodic administrative reviews of antidumping and countervailing duty orders. Merchandise found to be benefiting from subsidies or to have been "dumped" is subject to duties in the amount of the dumping or subsidization.

##### **Alternatives:**

U.S. objectives in the Uruguay Round antidumping negotiations were to improve transparency and due process in antidumping proceedings, develop disciplines on diversionary dumping, and ensure that the antidumping rules continue to provide an effective tool to combat injurious dumping. The Antidumping Agreement substantially achieve these objectives.

The Subsidies Countervailing Measures Agreement establishes clearer rules and stronger disciplines in the subsidies area while also making certain subsidies nonactionable, provided they are subject to conditions designed to limit distorting effects. The Agreements create three categories of subsidies and remedies: (1) prohibited subsidies; (2) permissible subsidies which are actionable if they cause adverse trade effects; and (3) permissible subsidies which are nonactionable if they are structured according to criteria intended to limit their potential for distortion.

##### **Anticipated Costs and Benefits:**

The Uruguay Round Agreements are anticipated to create hundreds of thousands of high-wage, high-skilled jobs in the United States. Further, economists estimate that the Uruguay Round will increase trade and will add between \$100 and \$200 billion to the United States economy after the round is fully implemented. Finally, the Agreements create an effective set of rules for the prompt settlement of disputes by eliminating shortcomings in the current system that allows parties to prolong the process and block adverse determinations.

The costs of administering the antidumping/countervailing duty system will be increased pursuant to the new rules established in the Uruguay Round and the implementing legislation. The new agreements dictate a number of new obligations in the investigation of petitions and the conduct of administrative reviews. Binding dispute settlement under the World Trade Organization (WTO) will also increase legal costs because substantially more challenges to ITA determinations will be brought to the WTO forum.

##### **Timetable:**

| Action                       | Date     | FR Cite     |
|------------------------------|----------|-------------|
| ANPRM                        | 01/03/95 | 60 FR 80    |
| ANPRM Comment Period End     | 02/24/95 |             |
| Interim Final Rule           | 05/11/95 | 60 FR 25130 |
| Interim Final Rule Effective | 05/11/95 |             |
| NPRM                         | 02/27/96 | 61 FR 7308  |
| NPRM Comment Period End      | 06/17/96 |             |
| Final Action                 | 12/00/96 |             |

##### **Small Entities Affected:**

None

##### **Government Levels Affected:**

None

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**DOC—National Oceanic and  
 Atmospheric Administration (NOAA)**

**FINAL RULE STAGE**

**14. FLORIDA KEYS NATIONAL  
 MARINE SANCTUARY**

**Priority:**

Other Significant

**Legal Authority:**

16 USC 1431 et seq; PL 101-605

**CFR Citation:**

15 CFR 929

**Legal Deadline:**

Final, Statutory, May 1993.

**Abstract:**

These regulations are necessary for the implementation of the Congressionally designated national marine sanctuary.

**Statement of Need:**

Mounting threats to the ecological health and future of the coral reefs of the Florida Keys from oil drilling, deteriorating water quality, vessel groundings, pollution, and intense human use prompted Congress to enact the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA) in late 1990. This Act designated a 2,800-square nautical mile area of coastal waters running the entire 220-mile length of the Florida Keys as the Florida Keys National Marine Sanctuary (Sanctuary). The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) is made responsible for developing a comprehensive Sanctuary management plan designed to protect Sanctuary resources while facilitating all compatible public and private uses of the Sanctuary.

Because of the size of the Sanctuary and the variety of the resources it contains, many problems never before

presented in sanctuary management must be addressed. For example, significant declines in water quality and habitat conditions in Florida Bay are threatening the health of Sanctuary resources. These conditions are thought to be the result of water quality and quantity management in the South Florida region. Accordingly, all agencies with responsibility in these areas are being incorporated into the continuous process of Sanctuary management.

**Summary of the Legal Basis:**

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act, PL 101-605, set out as a note to 16 USC 1433, became law. The FKNMSPA designated, effective the day of enactment, an area of waters and submerged lands, including the living and nonliving resources within those waters, the Florida Keys National Marine Sanctuary. Congress found that the area encompassed "spectacular, unique, and nationally significant marine environments, including seagrass meadows, mangrove islands, and extensive living coral reefs" with the environments being "the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved."

Both section 7(a) of the FKNMSPA and the National Marine Sanctuaries Research Act, 16 USC 1431 et seq. authorize NOAA to issue regulations necessary to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational, and aesthetic resources and qualities of the Florida Keys National Marine Sanctuary.

**Alternatives:**

A draft environmental impact statement (DEIS) has been published which sets forth alternatives for dealing with the problems identified in the planning process (e.g., boating, fishing, recreation). Five alternatives are set forth for each problem, ranging from complete restriction of uses to maintaining the status quo, with the most attention paid to the three mid-range alternatives. The DEIS sets forth the environmental consequences and the economic and social effects on the human environment of the three mid-range alternatives, including the groups and industries likely to be impacted under each alternative. The DEIS

selects the middle alternative as the preferred course of action because it best accomplishes the statutory objectives with due consideration of impacts on the human environment and costs.

A final management plan and regulations will be published that will further the Clinton Administration's objective of providing long-term protection for ecologically significant areas while maximizing their sustainable use. The final regulations will protect Sanctuary resources with the minimum necessary regulatory burden on Sanctuary users.

**Anticipated Costs and Benefits:**

In passing the FKNMSPA, Congress specifically recognized that the unique natural and historic environment of the Florida Keys is irreplaceable. Accordingly, the benefits of the proposed regulation are best seen by looking at what would be lost if the environment were not protected. First, the 2.4 million-acre Sanctuary contains one of North America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, particularly the Florida Reef Tract. In addition to the reef tract, the Sanctuary boundaries include thousands of patch reefs, one of the world's largest seagrass communities covering 1.4 million acres, mangrove-fringed shorelines, mangrove islands, and various hardbottom habitats. Moreover, these diverse habitats provide shelter and food for thousands of species of marine plants and animals, including over 50 species of animals identified by either Federal or State law as endangered or threatened. Finally, because the Keys were at one time a major seafaring center for European and American trade routes in the Caribbean, submerged cultural and historic resources, that is, shipwrecks, also abound in the surrounding waters. Recent information indicates that there may be more archaeological resources of pre-European cultures there than previously believed.

Loss of the unique and distinct marine resources of the Sanctuary would not only cost an irreplaceable ecosystem and cultural and historic resources, it would also significantly damage the economy of the Florida Keys. The abundance of marine resources in the Keys draws thousands of visitors each year. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing, and dive boats, and marinas, as well as



hotels and restaurants. More than half (51 percent) of the Florida Keys' employment is based in recreation and tourism, with about 61 percent of all recreation and tourism activities being water-related. About half of the \$1.6 billion in total sales for the area are related to tourism, with another \$16 million spent by Keys residents for recreation activities.

The wealth of natural marine resources also supports a large commercial fishing sector. With approximately 9 percent of the area work force, this industry is the fourth largest source of employment in the Keys.

Finally, the monetary costs of compliance with these regulations borne by individuals would be relatively small and arise from two items. First, those engaged in consumptive fishing will likely need to travel farther to fish. Additionally, some activities that were previously unregulated, such as treasure salvaging and coral collecting, would be required to obtain permits. However, the amount permitted to be charged for a permit may not exceed the cost of administering permit issuance.

It should be noted that Congress itself included several prohibitions that, by the prevention of income-generating and wealth-generating activity, will be quite costly. Specifically, Congress prohibited oil, gas, and mineral leasing

and development. However, since Congress prohibited this activity, the regulatory prohibition does not itself create this cost. Other than the prohibition of oil, gas, and mineral leasing, the Sanctuary regulations contain only one Sanctuary-wide prohibition, live rock harvest, that may generate costs.

#### Risks:

Many issues inherent in Sanctuary regulation are foreclosed by statutory prohibitions on tank vessels and on mineral and hydrocarbon leasing, exploration, development, and production within the Sanctuary.

The proposed regulations employ water zoning as a means of protecting Sanctuary resources and preventing user group conflicts. While several regulatory restrictions apply throughout the Sanctuary, certain restrictions apply only by zone. For example, all consumptive activities would be prohibited within 22 zones, constituting just over 5 percent of the Sanctuary area, including 90 percent of the heavily used, well-developed coral reef formations. This action might engender opposition from members of the public whose activities (diving, fishing, and boating) would be highly restricted; however, it was believed that this method was the best approach for achieving the goals of the statute.

#### Timetable:

| Action                  | Date     | FR Cite     |
|-------------------------|----------|-------------|
| NPRM                    | 03/30/95 | 60 FR 16399 |
| NPRM Comment Period End | 12/31/95 |             |
| Final Action            | 11/00/96 |             |
| Final Action Effective  | 04/00/97 |             |

#### Small Entities Affected:

None

#### Government Levels Affected:

State, Local

#### Additional Information:

Completion of this regulation within the dates projected in the timetable is subject to the availability of appropriated funds for NOAA after March 15, 1996. At this time, NOAA anticipates that sufficient funds will be appropriated to complete this project.

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